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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In re

Request of Cellular Communications of
Puerto Rico, Inc. to Hold Auctions to
License Certain Cellular RSAs

RM-8897

To: Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

MOTION TO STRIKE REPLY COMMENTS OF CENTURY CELLUNET, INC.

The RSA Operators Group ("RSAOG"), by their counsel, move to strike the Reply Comments of Century Cellunet, Inc. ("CCI") which were filed with the Commission on December 10, 1996. These Reply Comments were filed in support of the Comments filed by Western Wireless Corporation ("WWC") and Bell Atlantic NYNEX Mobile Corporation ("BANM"), and should be stricken for the same reason as the WWC and BANM comments should be stricken. ¹

¹ See Motion to Strike and Request for Sanctions Against CCPR ("Motion") filed by RSAOG on December 10, 1996. In addition to the Motion, RSAOG filed Comments and Reply Comments in this rulemaking proceeding in response to a Commission request for Comment. In doing so, RSAOG did not seek to adversely affect any of the pending RSA applications which have been accepted for filing. Accordingly, RSAOG requested waiver of its service obligations respecting the pending RSA applicants. RSAOG requests the same waiver respecting this pleading.

The comments of WWC and BANM and the Reply Comments of CCI all advocate dismissal of pending RSA applicants, and those parties were required to serve their filings on all pending RSA applicants for which they sought dismissal. Waiver is not appropriate for them. See discussion, *infra*.

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CCI did not file initial comments in this proceeding, and its Reply Comments supporting the comments of WWC and BANM should be stricken because they were filed in violation of the Commission's *ex parte* rules. CCI's Reply Comments ask the Commission to dismiss the pending applications in the six RSA markets that are the subject of this rulemaking proceeding, and to open a new filing window to allow all interested parties, including CCI, to file new applications for permanent authorization in these markets. CCI Reply Comments at p.5. The Commission's *ex parte* rules required CCI to serve copies of their Reply Comments on each of the pending applicants it asks the Commission to dismiss. The Commission has the power to waive its *ex parte* rules where, as with RSAOG's filings, the written submissions do not seek to adversely affect the protected applications that are being addressed. However, it could never be rational to allow *ex parte* filings seeking dismissal of protected applications; therefore, the Commission does not have the power to *sua sponte* waive its *ex parte* rules for CCI's Reply Comments.

The *ex parte* rules are designed to prevent lobbying for the dismissal of an applicant without that applicant being on notice of such lobbying efforts. Those rules help ensure that the due process rights of all parties before the Commission are preserved. Commission consideration of the Reply Comments filed by CCI is a

violation of the constitutional due process rights of the applicants. For these reasons, the Reply Comments of CCI should be stricken from the record.

Respectfully submitted,

RSA OPERATORS GROUP

By: 

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December 13, 1996

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CERTIFICATE OF SERVICE

I, Melissa L. Clement, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing "**Motion to Strike Reply Comments of Century Cellunet, Inc.**" to be sent via first class U.S. mail, postage prepaid or hand delivered, this 13th day of December, 1996 to each of the following:

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